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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,726	12/10/2003	William T. Ball	5564-152	2017

22442 7590 05/09/2011
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EXAMINER

BAKER, LORI LYNN

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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05/09/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/732,726	BALL, WILLIAM T.	
	Examiner	Art Unit	
	Lori Baker	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-27,29,30,32-38 and 40-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-27,29-30,32-38,40-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 3/8/11 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 11-15, 21-27, 29-30 and 32-38, 40-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over CH 346187, Ball '241, Rosenbaum, and Holt et al and further in view of O'Brien (US Patent 2993655). As previously stated in the office action mailed 10/25/10, The CH 346187 (Gebert) reference discloses an overflow assembly, as set forth in claims 11-14, 21-27, 29-30 and 32-38, 40-44 except for the provision of a diaphragm, and for the cap being engaged directly with the nut. The Ball '241 reference teaches (cols. 2-3) a method of testing a plumbing system where an outer end of an overflow pipe is

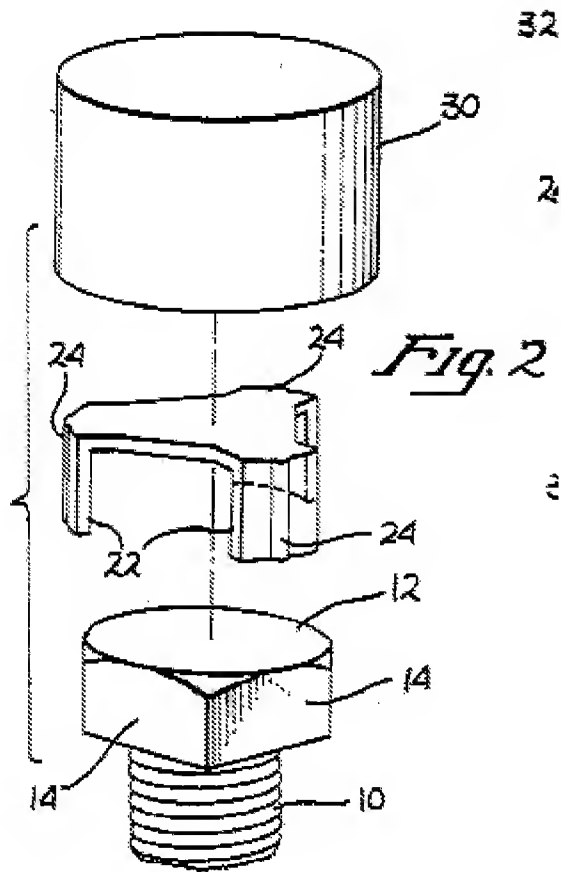
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closed with a diaphragm 64, the system is tested, and then the overflow pipe is opened by cutting the diaphragm. It would have been obvious to one of ordinary skill in the art to perform a plumbing test, as taught by Ball '241, on the Gebert plumbing system, in order to determine system integrity. Re claim 32, the choice of plastic as the material of composition for the diaphragm would appear an obvious choice to be made where Ball '241 teaches "flexible rubber or the like" (col. 2, ln. 36), and Gebert teaches that polyethylene plastic is elastic (pg. 3, lns. 4-5). Although the Gebert cap 14 is not engaged directly to the nut 8, as claimed, attention is directed to the Rosenbaum reference which teaches that a detachable nut cap is often provided to enhance the decorative appearance of the nut (col. 1, lns. 18- 23). Moreover, Rosenbaum teaches a direct engagement between a cap 30 and a nut 12 via a plurality of lugs 14 on the nut (col. 3, lns. 18-28). See the figure below. It would have been obvious to one of ordinary skill in the art to engage the cap of Gebert directly to the nut as being an art recognized equivalent connection scheme to the retaining ring 10 securement schemes in Gebert. The Holt et al. (Holt) reference is cited here as evidence that an overflow cap of the type disclosed by Gebert does function for appearance purposes. See Holt at column 1, lines 46-52. To the extent the nut disclosed by Gebert does not include radially extending lugs, such as those normally formed between hexagonal- patterned flats, Rosenbaum also evidences the common configuration of such a nut as discussed in the paragraphs bridging columns 2 and 3 (see figure below). Re claim 15, Ball '241 also teaches (Fig. 2) that a conventional plumbing system of the type disclosed by Gebert often includes a

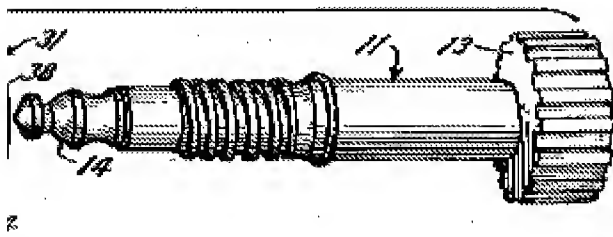
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vent pipe 40 and interconnecting pipe 42. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In response to applicant's argument that the prior art of Gebert, Rosenbaum and Holt do not disclose or teach a "nut", the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. Lastly, to the extent the nut disclosed by Rosenbaum does not include radially extending lugs, O'Brien teaches a nut 13 having radially extending lugs (see second figure below). It would have been obvious to one of ordinary skill in the art to modify Rosenbaum in view of the teaching of O'Brien such that radially extending lugs provide tighter securement of the nut to the cap and all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Rosenbaum:



O'Brien:



3. Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gebert, Ball '241, Rosenbaum, Holt et al and O'Brien, as applied to claim 11 above, and further in view of Ball '931. In response to applicant's argument that

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there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See the rejection from the previous office action and above is incorporated herein.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the detachable assembly in the prior art of Digby (see col. 2, lines 37-45) and Ten Hoven (see figures 2 and 4).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Baker whose telephone number is (571) 272-4971. The examiner can normally be reached on M-F, 8am-5pm. For interview requests, please contact the examiner **directly** and submit PTO Form 413A.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lori Baker/
Primary Examiner, Art Unit 3751